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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/900,663	07/06/2001	Michael J. Shotey	SHOT-0324	6595

23123 7590 12/09/2005

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EXAMINER	
JARRETT, SCOTT L	

ART UNIT	PAPER NUMBER
3623	

DATE MAILED: 12/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/900,663	SHOTEY ET AL.	
	Examiner	Art Unit	
	Scott L. Jarrett	3623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *21 October 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-14,16-24,26,27 and 29-32* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-14,16-24,26,27 and 29-32* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *06 July 2001* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *10/21/05*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. This **Final** Office Action is responsive to Applicant's amendment filed October 21, 2005 that amended claims 1-14,16-24, 26-27 and 29, canceled claims 15, 25 and 28 and added new claims 30-32. Currently claims 1-14,16-24, 26-27 and 29-32 are pending.

Response to Amendment

2. Applicant's amendment filed on October 21, 2005 with respect to amended claims 1-14,16-24, 26-27 and 29, canceled claims 15, 25 and 28 and added new claims 30-32 necessitated new ground(s) of rejection.

The objection to the title in the previous office action is withdrawn in response to the Applicant's amendments to the title.

The objection to the abstract in the previous office action is withdrawn in response to the Applicant's amendments to the abstract.

The USC 112 rejection of Claims 2-9, 11-26 and 29 in the previous office action is withdrawn in response to the Applicant's amendments to Claims 2-9, 11-26 and 29.

Response to Arguments

3. Applicant's arguments with respect to pending claims 1-14,16-24, 26-27 and 29-32 have been considered but are moot in view of the new ground(s) of rejection.

It is noted that the applicant did not challenge the Official Notice(s) cited in the First Office Action therefore those statements as presented are herein after prior art. Specifically it has been established that it was old and well known in the art at the time of the invention:

- to utilize merchandisers (retailing force, sales force, etc.) to manage and collect information regarding product displays, products and the like (point-of-sale, point-of-presence, product display, marketing materials, etc.; Specification: Background Information Section, Page 2, Lines 6-20; emphasis added);

> "It is **common** in the wholesale and retail industries for manufacturers and/or distributors of products to enlist the services of a person, commonly referred to as a "**merchandiser**" to visit the stores in which that manufacturer's or distributor's products are handled, and to ensure that the products are properly and advantageously presented to consumers. The **merchandiser**, for example, would be assigned **a set of stores** that handle products or product lines of its employer. At each location, the **merchandiser** typically inspects each display at which the product or product lines in question are presented. The **merchandiser** may appropriately stock the products so that an adequate supply of inventory is available to consumers. The **merchandiser** also may clean, organize, and otherwise maintain the display so that it is attractive and functional to optimize its effectiveness in attracting purchasers and supporting sales of

the product or product line. The **merchandiser** may be an employee of the manufacturer or distributor, or he or she may be a separately employed contractor or agent for the manufacturer or distributor. It is not uncommon for **merchandisers** to represent a number of manufacturers and/or distributors, and a **variety of products** and product lines."

- to utilize touch screens as a display and/or input device for computing devices;
- to submit collected information/data at regular intervals;
- to place transmitters (passive and/or active, tracking devices) in/on packages (objects, items, etc.) for the purposes of tracking/locating those objects; and
- to triangulate a signal in order to locate the origin of the signal.

Double Patenting

4. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

5. Claims 1-14,16-24, 26-27 and 29-32 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 44-53 and 65-76 of copending Application No. 10/741984. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 101

6. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

7. Claims 1-14,16-24,26,27 and 29-32 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The basis of this rejection is whether the invention produces a useful, concrete, and tangible result.

The merchandiser tracking and marketing data collection system/method of the as claimed does not produce a useful, concrete, and tangible result; the claimed invention merely collects a plurality of data which is not meaningful acted upon, manipulated and/or used to produce a useful, concrete and tangible result therefore the invention as claimed is directed towards non-statutory subject matter.

For example a useful, concrete and tangible result might be to analyze the collected marketing/merchandiser information for the purposes of determining the compliance/noncompliance of retailers, determining the productivity of merchandisers or to effect decisions related to the advertising/marketing of products/services. No such useful, concrete and tangible result is recited in the claimed invention.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

9. Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over CASIO Soft Inc.'s CSI MobileLink for Merchandising system (product) as evidenced by at least the following:

I. CASIO Soft – Web Pages (Nov. 1999 - Mar. 2000), herein after reference A.

II. Ginsberg, David, Lower Merchandising Costs and Increasing Competitiveness with Mobile Technology (Jul. 2000), herein after reference B; and

III. CASIO Soft Launches CSI MobileLink for Merchandising (Apr. 1999), herein after reference C.

Regarding Claim 1 CSI MobileLink teaches a paperless and mobile merchandising system and method, in development since 1996 and launched in 1999, wherein the system/method enables users (independent marketing/sales/merchandising organizations, field sales representatives, merchandisers, retailers, etc.) to automate the old and very well known paper-based merchandising processes such as merchandise detailing/reports, service calls, inventory, price, product display setting, marketing data collection, merchandiser/staff productivity, and the like (reference B: Page 1, Paragraphs 2-5; Page 2, Paragraphs 1-4; "Previous paper-based systems were

easy to use, but slow and labor intensive to process." Page 4, Paragraph 3; reference C: Page 1, Paragraphs 1-4).

CSI MobileLink further teaches that the merchandiser tracking and marketing data collection system and method utilizes handheld computers (Windows CE, Pocket PC, Palm, personal digital assistants) comprising touch screen displays, mobile printers modems and bar code readers that enable merchandisers perform/collect, store and transmit a plurality of merchandiser and marketing information for further analysis (e.g. call duration, merchandising detailing reports, questionnaires, surveys, forms, etc.; reference A: page 2, Paragraphs 1-3; Page 3, Bullets 1-6; reference C: Page 2, Bullets 3-7, 14, 17-18).

More specifically CSI MobileLink teaches a merchandiser tracking and marketing data collection system and method for collecting marketing data pertaining to a merchandiser (staff, worker, employee, user, field sales representative, etc.) at a store, the system comprising (reference A: Pages 2-3, 5, 11, 16; reference B: Page 4, Paragraph 3):

- a store identifying code (name, address, store number, etc.; e.g. store specific reports/information inherently having a unique store identification; reference A: Page 7, Paragraph 1; Page 8, Paragraph 1; Page 19, Paragraph 1; reference B: Page 4, Paragraph 2);

- a plurality of different product display identification codes (e.g. UPC, bar code, product name, etc.) located throughout the store (reference A: Page 13; reference B: Pages 2-3; reference C: Page 1, Paragraphs 4-5);

- a portable code reader comprising a processor that stores information received through the code reader (handheld, Windows CE, personal digital assistant, PDA, etc.) as entered/inputted by the merchandiser (reference A: Page 2; reference B: Page 3, Paragraphs 3-5);

- wherein the portable code reader further tracks the duration of the merchandisers visit to the store (call/service duration; i.e. inherently receives the merchandiser's arrival and departure times to/from at the store (reference A: Page 1, Paragraph 2; Page 3, Bullet 4; reference B: Page 2, Paragraph 4; reference C: Page 2, Bullet 18); and

- a plurality of different product/product display identification codes (UPC; inherent in being able to collect and report on product, store and display specific information; reference A: Pages 13-15; Page 1, Paragraphs 4-5) each having associated marketing data entered by the merchandiser as he/she visits and scans the product display identification codes (reference B: Page 1, Paragraphs 2-4; Page 6; Page 3, Paragraph 2).

CSI MobileLink does not expressly teach that the store identification is located at or near an entrance to the store as claimed.

Official notice is taken that it is old and well known to place store identification at or near the entrance of a store. For example stores commonly place store address, store number or other store identification data at or near the entrance to enable

customers (visitors) to do such things as make/send comments in regarding the store and/or identify the store on checks or other forms of payments.

It would have been obvious to one skilled in the art at the time of the invention that the merchandiser tracking and marketing data collection system and method with its ability to collect, store/record and report on a plurality of store, product and/or product display specific information would have benefited from receiving/collecting the identity of the store being "detailed" from any of a plurality of locations including but not limited to a store identification at or near the store's entrance in view of the teachings of official notice.

Further it is noted that while CSI MobileLink does not expressly teach that the store identification is located at or near an entrance to the store; these differences are only found in the non-functional descriptive material and are not functionally involved in the steps recited nor do they alter the recited structural elements. The recited method steps would be performed the same regardless of the specific location of the store identification code. Further, the structural elements remain the same regardless of the specific location of the store identification code. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, *see In re Gulack, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); In re Lowry, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP 2106.*

Regarding Claim 2 CSI MobileLink does not expressly teach that the code reader reads a magnetic strip as claimed.

Official notice is taken that utilizing magnetic strips to collect, store and/or provide data such as identification data is old and very well known.

It would have been obvious to one skilled in the art at the time of the invention that the merchandiser tracking and marketing data collection system and method as taught by CSI MobileLink with its ability to read/capture, store and transmit codes via a code reader would have benefited from supporting any of a plurality of well known code readers/forms/formats including but not limited to a magnetic strips in view of the teachings of official notice.

Further it is noted that while CSI MobileLink does not expressly teach that the code reader reads a magnetic strip; these differences are only found in the non-functional descriptive material and are not functionally involved in the steps recited nor do they alter the recited structural elements. The recited method steps would be performed the same regardless of the specific type of code reader utilized. Further, the structural elements remain the same regardless of the specific type of code reader utilized. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, *see In re Gulack, 703 F.2d 1381, 1385, 217 USPQ*

401, 404 (Fed. Cir. 1983); In re Lowry, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP 2106.

Regarding Claim 3 CSI MobileLink teaches a merchandiser tracking and marketing data collection system and method wherein the code reader reads a bar code (reference A: Page 2, Paragraph 3; Page 3, Bullet 5; reference C: Page 2, Bullet 19).

Regarding Claim 4 CSI MobileLink teaches a merchandiser tracking and marketing data collection system and method wherein the system further comprises a printer in connection with the device (Windows CE, PDA, handheld, processor, etc.) whereby the printer can print information relative to the input of the code reader (device, PDA, etc.; reference A: Page 3, Bullet 5; reference C: Page 2, Bullet 19).

Regarding Claim 5 CSI MobileLink teaches a merchandiser tracking and marketing data collection system and method further comprising a display in association with the device (code reader, PDA, processor, etc.) providing certain predetermined information to enable the merchandiser to input information through the code reader (graphical user interface, merchandiser detailing report, survey, questionnaire, instructions and service calls, call schedule, merchandiser questionnaire, etc.; reference A: Page 2, Bullets 1, 7-8; Page 7, Paragraph 1; Page 8, Paragraph 1; reference B: Page 2, Paragraphs 1, 4; reference C: Page 1, Paragraphs 2-4; Page 2, Bullet 6).

Regarding Claim 6 CSI MobileLink teaches a merchandiser tracking and marketing data collection system and method wherein the display is a touch screen display through which the merchandiser may input information to be recorded on the device (processor, code reader, PDA, etc.; reference A: Page 7, Paragraph 1; reference B: Page 3, Paragraph 5; reference C: Page 2, Bullet 13).

Regarding Claim 7 CSI MobileLink teaches a merchandiser tracking and marketing data collection system and method wherein the system further comprises a transfer mechanism (modem, Windows CE synchronization, etc.) to transmit information from the processor to a data center (system, server, database, etc.) upon occurrence of a predetermined event (data synchronization, upload, etc.; reference A: Page 2, Bullet 2; Page 7, Paragraph 1; reference B: Page 2, Paragraphs 3-5; reference C: Page 2, Bullet 14).

Regarding Claim 8 CSI MobileLink teaches a merchandiser tracking and marketing data collection system and method wherein the predetermined event is one or more set times of the day at which transmission occurs (daily reports, nightly synchronization, real-time information; reference A: Page 2, Bullets 2, 5; Page 7, Paragraph 1; reference C: Page 1, Paragraphs 2-4).

Regarding Claim 9 CSI MobileLink teaches a merchandiser tracking and marketing data collection system and method wherein at least some of the product

display identification codes include a bar code on a product on display at the product display associated with the corresponding product display (bar code reader on device is used to read/record display and/or product information for reporting purposes; e.g. UPC, bar-code lookup, etc.; reference A: Page 2; Paragraph 3; Pages 14-15; reference B: Page 2, Paragraph 3; Screen 1; Page 3, Paragraphs 1-2).

10. Claims 10-14, 16-24, 26-27 and 29-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over CASIO Soft Inc.'s CSI MobileLink for Merchandising system (product) as evidenced by at least the following:

I. CASIO Soft – Web Pages (Nov. 1999 - Mar. 2000), herein after reference A.

II. Ginsberg, David, Lower Merchandising Costs and Increasing Competitiveness with Mobile Technology (Jul. 2000), herein after reference B; and

III. CASIO Soft Launches CSI MobileLink for Merchandising (Apr. 1999), herein after reference C.

as applied to claims 1-9 above and further in view of Small et al., U.S. Patent No. 5,642,303.

Regarding Claim 10 CSI MobileLink teaches a merchandiser tracking and marketing data collection system and method collecting marketing data pertaining to a merchandiser at a store, the system/method comprising:

- receiving/entering a store-identifying (location identifying) code (reference A: Page 7, Paragraph 1; Page 8, Paragraph 1; Page 19, Paragraph 1; reference B: Page 4, Paragraph 2);

- identifying and receiving via a portable code reader (PDA, handheld, device, etc.) carried by the merchandiser, when the merchandiser arrives at and departs from a store (recording/receiving/determining call duration inherently comprising arrival/departure times; reference A: Page 1, Paragraph 2; Page 3, Bullet 4; reference B: Page 2, Paragraph 4; reference C: Page 2, Bullet 18);

- a plurality of different product display identification codes located throughout the store wherein the device receives (reference A: Pages 13-15; Page 1, Paragraphs 4-5; reference B: Page 1, Paragraphs 2-4; Page 6; Page 3, Paragraph 2); and

- a plurality of different product identification codes related to the different product displays as the merchandiser visits and scans each of the different product displays (reference A: Pages 13-15; Page 1, Paragraphs 4-5; reference B: Page 1, Paragraphs 2-4; Page 6; Page 3, Paragraph 2).

CSI MobileLink does not expressly teach a transmitter in a predetermined location wherein the transmitter transmits a store-identifying code or a receiver associated with the portable code reader for receiving the transmitted store identification code as claimed.

Small et al. teach a transmitter in a predetermined location wherein the transmitter transmits location-identifying code (unique location ID) and a receiver in a portable/handheld device for receiving and acting upon the transmitted location-identifying code, in an analogous art of mobile computing for the purposes of enabling time and location based computing (information (Abstract; Column 2, Lines 45-65; Column 5, Lines 10-20; Figure 2; i.e. providing systems with actionable geo-location information).

More generally Small et al. teach a system and method for providing time and location based computing wherein the system comprises a plurality/series of

transmitters (beacons, radio frequency transmitters) placed at one or more predetermined locations and one or more handheld devices comprising a processor, display, receiver and memory (Column 2, Lines 43-65; Figure 1) that receive and utilize the received time and location information to provide time and location based services to the user.

Small et al. further teach that location-based services are old and well known and that such systems include Global Position Systems ("Many of today's location-based applications rely of Global Positioning System (GPS) to determine their physical location.", Column 1, Lines 27-29) as well as Texas Instruments Registration and Identification System (TIRS; Column 4, Lines 46-57).

Small et al. teach a system and method for enabling time and location based computing systems wherein:

- the handheld device is a geo-location positioning device comprising of a receiver and the geo-location positioning device receiving a broadcast location from the transmitter when the device is within the region (Figure 1; Column 2, Lines 43-65; Column 4, Lines 3-7);

- a plurality of radio frequency transmitters (Figure 2; Column 2, Lines 43-65); and

- geo-location information is stored within data storage (i.e. stores presence/event of the user in a predetermined location; Column 1, Lines 50-62; Figure 1).

It would have been obvious to one skilled in the art at the time of the invention that the merchandiser tracking and marketing data collection system and method as taught by CSI MobileLink with its ability to identify, collect and report on a plurality of store, product and/or product display information via a handheld device would have benefited from utilizing well known geo-location methods/systems to identify the location/store for which the information is being collected in view of the teachings of Small et al.; the resultant system enabling users to collect track merchandisers and/or collect store specific information wherein the location of the store/merchandiser are automatically provided via a geo-location subsystem (e.g. context sensitive workspace, remind users to perform certain functions/activities; Small et al.: Column 2, Lines 36-42; Column 5 24-30; Column 6, Lines 18-25)

Further it is noted that while CSI MobileLink does not expressly teach that the store identification is transmitted/received via a transmitter/receiver pair as claimed; these differences are only found in the non-functional descriptive material and are not functionally involved in the steps recited nor do they alter the recited structural elements. The recited method steps would be performed the same regardless of the specific mechanism through which the system receives store identification codes and/or merchandiser arrival/departure times. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, *see In re Gulack, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); In re Lowry, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP 2106.*

Regarding Claim 11 CSI MobileLink does not expressly teach that the system (portable device, receiver, handheld, etc.) includes a geo-location positioning device as claimed.

Small et al. teach a portable device (handheld, PDA, etc.) further comprising a geo-location positioning device (e.g. global positioning system), in an analogous art of mobile/location-based computing for the purposes of enabling users to conduct location specific activities/functions (Abstract; Column 2, Lines 43-65; Column 3, Lines 63-68; Column 4, Lines 1-16; Figure 2).

It would have been obvious to one skilled in the art at the time of the invention that the merchandiser tracking and marketing data collection system and method with its ability to collect, store and report on a plurality of location specific marketing and merchandiser information would have benefited from incorporating into the merchandiser's mobile handheld device a geo-location positioning system (subsystem, component, device, etc.) in view of the teachings of Small et al.; the resultant system enabling users to collect/track merchandisers and/or collect/store specific information wherein the location of the store/merchandiser are automatically provided via a geo-location subsystem (e.g. context sensitive workspace, remind users to perform certain functions/activities; Small et al.: Column 2, Lines 36-42; Column 5 24-30; Column 6, Lines 18-25).

Regarding Claim 12 CSI MobileLink does not expressly teach that the handheld device (subsystem, component, etc.) further comprises a geo-location device, as discussed above, or subsequently that the geo-location positioning device is preprogrammed with one or more regions about one or more stores as claimed.

Small et al. teach a handheld device comprising a geo-location device and that the system (geo-location positioning device) is preprogrammed with one or more regions about one or more key/desired locations (stores, offices, location manager, etc.; Column 2, Lines 43-65; Column 3, Lines 1-18; Column 4, Lines 1-15; Column 9, Lines 60-68) in an analogous art of location specific mobile computing, for the purposes of enabling users to build systems (applications, products, computer systems, etc.) that are location-aware (Column 4, Lines 10-14).

It would have been obvious to one skilled in the art at the time of the invention that the merchandiser tracking and marketing data collection system and method with its ability to track a merchandisers call duration (arrival/departure times from predetermined stores/locations) would have benefited from incorporating into the merchandisers mobile handheld device a geo-location position system (subsystem, component, device, etc.) preprogrammed with one ore more store locations (predetermined regions) in order to record/determine a merchandiser's call durations and/or call schedules (e.g. who's behind schedule; visit to a store, key location) in view of the teachings of Small et al.; the resultant system/method enabling users to build

systems/methods (applications, products, computer systems, etc.) that are location-aware and can trigger location-specific actions/activities (Small et al.: Column 4, Lines 10-14).

Regarding Claim 13 CSI MobileLink does not expressly teach that the handheld device (subsystem, component, etc.) further comprises a geo-location device, as discussed above, or subsequently that the geo-location positioning device receives a broadcast location from the transmitter when the geo-location devices is within a predetermined region and stores the location/event in a storage device associated with the receiver as claimed.

Small et al. teach that the geo-location positioning device (handheld device) receives a broadcast location from the transmitter when the geo-location device is within a key location (region, store, desired location, etc.) and stores the location/event in a storage device associated with the receiver (Column 2, Lines 43-65; Column 3, Lines 1-18; Column 4, Lines 1-15; Column 9, Lines 60-68).

It would have been obvious to one skilled in the art at the time of the invention that the merchandiser tracking and marketing data collection system and method with its ability to collect, store and report on a plurality of location and time specific merchandiser and marketing information as taught by CSI MobileLink would have benefited from enabling the merchandiser's handheld device with a geo-location

subsystem/component and utilizing that component to detect the merchandisers location at a store/key location in view of the teachings of Small et al.; the resultant system/method automating the determination and recordation of the merchandisers presence in a specific store (location aware application; Small et al.: Column 4, Lines 1-15).

Regarding Claim 14 CSI MobileLink teaches a merchandiser tracking and marketing data collection system and method wherein at least some of the product display identification codes include a bar code on a product on display at the product display associated with the corresponding product display (bar code reader on device is used to read/record display and/or product information for reporting purposes; e.g. UPC, bar-code lookup, etc.; reference A: Page 2; Paragraph 3; Pages 14-15; reference B: Page 2, Paragraph 3; Screen 1; Page 3, Paragraphs 1-2).

Regarding Claim 16 CSI MobileLink teaches recording/collecting, storing and reporting the duration of a merchandiser's service call (i.e. call duration = arrival time – departure time) as discussed above.

CSI MobileLink does not expressly teach that the handheld device (subsystem, component, etc.) further comprises a geo-location device, as discussed above, or wherein the storage device records the event (merchandiser entering the store) and the time of its occurrence.

Small et al. teach a handheld device further comprising a geo-location device (subsystem) wherein the device detects, determines, records and acts upon time and location specific information in an analogous art of mobile computing; for the purposes of performing location/time specific actions/activities/functions (Column 3, Lines 1-19; Column 10, Lines 1-5).

It would have been obvious to one skilled in the art at the time of the invention that the merchandiser tracking and marketing data collection system and method with its ability to collect, store and report on a plurality of location specific merchandiser and marketing information would have benefited from providing merchandisers with geo-location enabled handheld devices and recording the time/location of those devices as the merchandiser "visits" a plurality of stores in view of the teachings of Small et al.; the resultant system/method automating the detection/collection of time and/or location specific merchandiser and marketing data (Small et al.: Column 3, Lines 15-19).

Regarding Claims 17-18 CSI MobileLink teaches a merchandiser tracking and marketing collection system and method wherein a storage device associated with the merchandiser (handheld, Windows CE, PDA, etc.) receives/records the time of day the merchandisers leaving the store with the receiver (i.e. PDA; recording merchandiser departure time, call duration, etc.; reference A: Page 1, Paragraph 2; Page 3, Bullet 4; reference B: Page 2, Paragraph 4; reference C: Page 2, Bullet 18).

Regarding Claim 19 CSI MobileLink teaches a merchandiser tracking system and method where in the store identification information is submitted/collected/entered and a handheld device (PDA, code reader, receiver, etc.) is associated with the merchandiser (name, address, store number, etc.; e.g. store specific reports/information inherently having a unique store identification; reference A: Page 7, Paragraph 1; Page 8, Paragraph 1; Page 19, Paragraph 1; reference B: Page 4, Paragraph 2).

CSI MobileLink does not expressly teach that a transmitter is at the store as claimed.

Small et al. teach placing a plurality of transmitters (beacons) in a plurality of key locations (regions, zones, etc.) in an analogous art of mobile computing for the purposes of providing location specific information to a plurality of systems/methods (applications, products, etc.) wherein those system/methods utilize the time/location specific information provided by the transmitters to perform predetermined actions/activities/functions (Column 2, Lines 65-68; Column 3, Lines 1-19; Column 5, Lines 8-19).

It would have been obvious to one skilled in the art at the time of the invention that the merchandiser tracking and marketing data collection system and method as taught by CSI MobileLink with its ability to identify, record and report on a plurality of store, product and/or product display specific information would have benefited from

identifying the plurality of store locations (key locations) utilizing a plurality of transmitters (beacons) at the stores in view of the teachings of Small et al.; the resultant system automating the identification and recordation of store locations as well as enabling the system/method to trigger any of a plurality of predetermined actions/activities/functions upon the arrival of the merchandiser at one or more of the predetermined locations (Small et al.: Column 3, Lines 1-19).

Regarding Claim 20 CSI MobileLink teaches collecting/storing/reporting the call durations of a plurality of merchandisers visiting a plurality of products displayed/sold in a plurality of stores as discussed above.

CSI MobileLink does not expressly teach that the portable device (code reader, handheld, etc.) further comprises a receiver or subsequently that the portable code reader records the receipt of the transmission by the receiver from a transmitter as claimed.

Small et al. teach that a portable device comprising a receiver that detects, records/stores and acts upon the receipt of a transmission from a transmitter placed in any of plurality of key locations, in an analogous art of mobile time/location based computer for the purposes of enabling context-sensitive computing and/or enabling mobile systems to the time and location aware (Column 3, Lines 1-19; Column 5, Lines 14-20; Column 8, Lines 50-65).

It would have been obvious to one skilled in the art at the time of the invention that the merchandiser tracking and marketing data collection system and method as taught by CSI MobileLink would have benefited from recording/storing the receipt of a transmission (i.e. identifying a location via a transmitter/beacon) in view of the teachings of Small et al.; the resultant system/method enabling context-sensitive computing and/or enabling mobile systems to the time and location aware (Small et al.: Column 3, Lines 1-19; Column 5, Lines 14-20; Column 8, Lines 50-65).

Regarding Claim 21 CSI MobileLink teaches a merchandiser tracking and marketing data collection system and method wherein the merchandiser utilizes a single/unitary device (handheld, code reader, PDA, etc.) to enter/receive/record and transmits the plurality of information.

CSI MobileLink does not expressly teach that the handheld device further comprises a receiver as claimed.

Small et al. teach a handheld device further comprising a receiver as discussed above.

It would have been obvious to one skilled in the art at the time of the invention that the merchandiser tracking and marketing data collection system and method as

taught by CSI MobileLink would have benefited from providing merchandisers with handheld devices having a receive (geo-location capability) in view of the teachings of Small et al.; the resultant system/method automating the identification and recording of the store location/identification code.

Neither CSI MobileLink nor Small et al. expressly teach that the receiver and handheld device are unitary as claimed.

Official notice is taken that incorporating receivers into a handheld device wherein the resultant device is unitary is old and very well known and provides a plurality of well-known benefits such as a better form factor (i.e. the device is more compact).

It would have been obvious to one skilled in the art at the time of the invention that the merchandiser tracking and marketing data collection system and method with its ability to automatically determine and record the location of the merchandiser and associated marketing data collected as taught by the combination of CSI MobileLink and Small et al. would have benefited from providing merchandisers with a single/unitary handheld comprising a receiver in view of the teachings of official notice.

Regarding Claim 22 CSI MobileLink does not expressly teach that the merchandiser tracking system and method further comprises a transmitter, as discussed above, or subsequently that the transmitter is a radio frequency transmitter.

Small et al. teach a system further comprising a radio frequency transmitter, in an analogous art of time/location specific mobile computing for the purposes of purposes of enabling context-sensitive computing and/or enabling mobile systems to the time and/or automatically providing location information (Column 3, Lines 1-19 and 64-68; Column 4, Lines 1-16; Column 5, Lines 14-20; Column 8, Lines 50-65).

It would have been obvious to one skilled in the art at the time of the invention that the merchandiser tracking and marketing data collection system and method as taught by CSI MobileLink would have benefited from utilizing a radio frequency transmitter in view of the teachings of Small et al.; the resultant system/method enabling context-sensitive computing and/or enabling mobile systems to the time and location aware (Smith et al.: Column 3, Lines 1-19; Column 5, Lines 14-20; Column 8, Lines 50-65).

Regarding Claim 23 CSI MobileLink teaches storing a plurality of location/store and product information related to the calls the merchandiser is scheduled to perform (store address, store management information, products, etc.; reference A: Pages 2-3, 6-8; reference B: Page 2, Paragraphs 3-4).

CSI MobileLink does not expressly teach that the system/method further comprises a transmitter or subsequently that the transmitter transmits the product identification code corresponding to each display unit is located in close proximity to the display unit.

Small et al. teach placing transmitters at one or more key/desired locations wherein the transmitter transmit, to receiver units in close proximity to the transmitter, location specific identification information which is correlated to location specific information in a database (data store, location manager, etc.) for the purposes of identifying key locations and retrieving information related to those identified locations (charging facilities, hardware at the location, etc.; Column 9, Lines 60-68; Column 10, Lines 1-8).

It would have been obvious to one skilled in the art at the time of the invention that the merchandiser tracking and marketing data collection system and method as taught by CSI MobileLink with its plurality of information regarding the plurality of stores/products the merchandiser is scheduled to visit (call schedule, call management, etc.) would have benefited from retrieving that information based on the receipt of a store-identification from a transmitter at the store/product display in view of the teachings of Small et al.; the resultant system/method automating the collection of

time/location specific information related to the plurality of stores, products and/or product displays to be "detailed" by the merchandiser.

Regarding Claim 24 CSI MobileLink does not expressly teach that the system/method further comprises a transmitter or subsequently that the transmitter is located in a package.

Small et al. teach a system further comprising a transmitter/receiver wherein transmitters are placed in key locations, in an analogous art of location/time based computing for the purposes of making systems/methods location "aware" (Column 4, Lines 8-13).

Small et al. further teach that location-based/tracking services are old and well known on such system being Texas Instrument's Registration and Identification System (TIRS; Column 4, Lines 46-57).

Small et al. does not expressly teach placing the transmitter in the product package as claimed.

Official notice is taken that placing transmitters (passive and/or active, tracking devices) in/on packages (objects, items, etc.) for the purposes of tracking/locating those objects is old and well known in the art.

It would have been obvious to one skilled in the art at the time of the invention that the merchandiser tracking and marketing data collection system and method as taught by the combination of CSI MobileLink and Small et al. would have benefited from utilizing transmitters placed in/on product packages (items, objects) to provide item location/tracking information to the system, in view of the teachings of official notice; the resultant system providing for the detailed location tracking of products/items.

Regarding Claim 26 CSI MobileLink teaches a merchandiser tracking and marketing data collection system and method wherein merchandisers collect a plurality of information from a plurality of different stores and one or more different products/product displays at each of the one or more different stores utilizing a portable code reader/device as discussed above.

CSI MobileLink does not express teach that the system/method further comprises transmitters/receivers for identifying the plurality of stores, products and/or product displays as claimed.

Small et al. teach utilizing transmitters/receivers to define, identify and act upon a plurality of location-specific information as discussed above.

It would have been obvious to one skilled in the art at the time of the invention that the merchandiser tracking and marketing data collection system and method with

collect a plurality of store, product and product display information utilizing a handheld code reader/device would have benefited from utilizing transmitters to identify/define a plurality of stores, product and/or product display locations (key locations) and triggering location-specific actions/data to be collected/retrieved in view of the teachings of Small et al.; the resultant system automating the identification and capture of location specific store, product and/or product display information.

Regarding Claim 27 CSI MobileLink teaches a merchandiser tracking and marketing data collection system and method for collecting marketing data pertaining to a merchandiser at a store, comprising:

- identifying a merchandiser's visit/call to a specific store (name, address, store number, etc.; e.g. store specific reports/information inherently having a unique store identification; reference A: Page 7, Paragraph 1; Page 8, Paragraph 1; Page 19, Paragraph 1; reference B: Page 4, Paragraph 2);

- recording a position (e.g. address, store location, etc.) of the portable code reader when it enters the predetermined region (store, name, address, store number, etc.; e.g. store specific reports/information inherently having a unique store identification; reference A: Page 7, Paragraph 1; Page 8, Paragraph 1; Page 19, Paragraph 1; reference B: Page 4, Paragraph 2);

- receiving a plurality of product display identification codes in association with marketing data collection by the merchandiser through the portable code reader at the store as the merchandiser visits and scans each product display identification code

(reference A: Pages 13-15; Page 1, Paragraphs 4-5; reference B: Pages 2-3; reference C: Page 1, Paragraphs 4-5);

- associating the marketing data collected with the store identification code (store level reports reference A: Pages 13-15; Page 1, Paragraphs 4-5); and

- recording the removal (departure) of the portable code reader when it leaves the predetermined region (call/service duration; i.e. inherently receives the merchandiser's arrival and departure times to/from at the store (reference A: Page 1, Paragraph 2; Page 3, Bullet 4; reference B: Page 2, Paragraph 4; reference C: Page 2, Bullet 18).

CSI MobileLink does not expressly teach determining a pre-determined region about a store, a portable code reader further comprising a geo-location positioning device programmed to identify the predetermined region or associating that position with a store identifying identification code corresponding to the store in the predetermined region as claimed.

Small et al. teach providing handheld devices with a receiving for detecting/identifying, recording and acting upon the one or more predetermined/key locations (regions, zones) wherein a plurality of actions/activities/functions and/or location-specific information can be utilized, in an analogous art of location-based mobile computing for the purposes of enabling systems/methods to be location "aware" (i.e. perform location specific tasks and/or access location specific information; Column

2, Lines 43-65; Column 3, Liens 1-19; Column 5, Lines 12-20 and 40-50; Column 9, Lines 60-68; Column 10, Lines 1-5).

It would have been obvious to one skilled in the art at the time of the invention that the merchandiser tracking and marketing data collection system and method as taught by CSI MobileLink would have benefited from providing location-specific information via receivers in the merchandiser's handheld devices and transmitters at key locations (stores, product displays, etc.) in view of the teachings of Small et al.; the resultant system/method automating the identification and recordation of store, product, and/or product display information (location aware; Small et al.: Column 5, Lines 10-20; Column 9, Lines 60-68; Column 10, Lines 1-5).

Regarding Claim 29 CSI MobileLink teaches a merchandiser tracking and marketing data collection system and method further comprising recording an arrival (time of entry) and departure (exit) time of merchandiser's device (handheld, PC, portable code reader, etc.) associated with a predetermined region (store) as discussed above.

CSI MobileLink does not expressly teach that the handheld device/portable code reader further comprises a geo-location position device, as discussed above, or subsequently using that device to record the entry/exit of the merchandiser from a predetermined region as claimed.

Small et al. teach utilizing receivers/transmitters to detect/identify, record and act upon a plurality of location/time specific conditions wherein transmitters are placed in one or more key locations and transmit unique location-identification codes that can be used to trigger location/time specific actions/functions and/or access location-specific information as discussed above.

It would have been obvious to one skilled in the art at the time of the invention that the merchandiser tracking and marketing data collection system and method as taught by CSI MobileLink with its ability to determine/track call/service durations (entry/exit to/from stores) would have benefited from incorporating geo-location devices (subsystems, components, etc.) into the merchandisers handheld devices (code readers) and placing transmitters transmitting location-identification information at key locations/stores in order to track/monitor the movements of merchandisers in view of the teachings of Small et al.; the resultant system/method automating the process of detecting and recording merchandiser service calls.

Regarding Claim 30 CSI MobileLink teaches a merchandiser tracking and marketing data collection system and method wherein receiving a plurality of product display identification codes comprises (reference A: Pages 2-3, 7-8; reference B: Pages 2-3; reference C: Page 2):

- receiving a first/second product identification codes through the bar code reader as the merchandiser visits the first/second product displays; and

- receiving marketing data relating to the first/second product displays.

Regarding Claim 31 CSI MobileLink teaches a merchandiser tracking and marketing data collection system and method wherein the bar code (first/second, etc.) is on a product displayed on the first/second product display (bar code reader, bar code lookup; etc.; reference A: Page 2; Paragraph 3; Pages 14-15; reference B: Page 2, Paragraph 3; Screen 1; Page 3, Paragraphs 1-2).

Regarding Claim 32 CSI MobileLink teaches a merchandiser tracking and marketing data collection system and method wherein the store is a first store among a plurality of stores and the system/method further comprising determining a when and what stores the merchandiser conducts their scheduled service/detailing calls (call schedule, call duration, etc.) wherein the merchandiser utilizes their portable code reader to record the store's identification and record a plurality of merchandiser and marketing data as discussed above.

CSI MobileLink does not expressly teach determining a predetermined region about each store among the plurality of stores and associating entry by the portable code reader into any predetermined regions with a store-identification code corresponding to the store within the predetermined region as claimed.

Small et al. teach establishing/defining regions/zones about a plurality of key locations (stores, product displays, etc.) wherein upon the detection/entering of any of the plurality of predetermined zones/regions/locations the system triggers location-specific activities/functions and/or information retrieval as discussed above.

It would have been obvious to one skilled in the art at the time of the invention that the merchandiser tracking and marketing data collection system and method with its ability to track/determine merchandiser call durations (entry/exit into/from store locations) as taught by CSI MobileLink would have benefited from determining/identifying the merchandiser's call durations utilizing transmitters to "mark" the plurality of stores and receivers to detect and act upon the entering/existing to/from the predetermined/key areas in view of the teachings of Small et al.; the resultant system/method automating the determination/identification of the merchandisers location.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Call, James, U.S. Patent No. 4,290,688, teaches a system and method for collecting marketing data via a handheld portable bar code scanner wherein the portable device collects a plurality of market survey data related to universal product codes.

- Blum, Alvin, U.S. Patent No. 4.268,193, teaches a system and method managing a mobile workforce who must perform duties at a plurality of locations

wherein the system/method utilizes a portable code reader to ensure the correct performance of worker tasks/activities (supervising workers).

- Brown et al., U.S. Patent No. 6,873,851, teach a system and method to schedule worker/user activities (personal information managers) with location information wherein users are provided handheld devices comprising a geo-location positioning device (GPS). Brown et al. further teaches that the system/method enables users to "review their actual activity and movement and compare with planned goals or scheduled events. Such information will enable people and organizations to more optimally allocate their time..."

Brown et al. teaches that the geo-location enabled handheld device records the users entry/exit into a plurality of predetermined areas wherein the predetermined areas include transmitters for transmitting location identification as well as determining how long a user has been at a particular location.

- CT Motion Ltd., WO 00/441104, teaches a system and method for managing a mobile workforce (staff, personnel, field service representatives, etc.) wherein the system utilizes handheld devices, comprising a geo-location capability/device, GPS, wireless transmitter/receiver, to schedule and track/monitor mobile workers wherein worker's current location and schedule are periodically monitored and reported on to "discovers location violations from the current task assignment schedule, measures accuracy of the current task assignment schedule or/and measures worker's productivity for each assigned task."

- CASIO Soft's New Enterprise Mobile Data Collection Solution (Mar. 2000) teaches a commercially available merchandiser tracking and marketing data collection system and method (MobileLink 2.3) that is utilized by a plurality of businesses to capture and analyze a plurality of marketing/merchandising information such as point-of-sale merchandising or plan-o-gram compliance. The article further teaches that the system/method automates well known paper-based methods/systems for collecting and analyzing merchandiser and marketing information thereby gaining the expected benefits from such automation including but not limited to "reduced costs, faster delivery, reduction in incomplete call reports...." and the like.

- Buyproduce.com and CASIO Soft, Inc. Introduce CSI MobileLink to Produce Industry (Mar. 2000) teaches the public use and commercial availability of a merchandiser tracking and marketing data collecting system and method utilized by a plurality of businesses "early in 1999."

- Alan, Joch, Concocting a stout brew of information (Jun. 2000) teaches the utilization of merchandiser and marketing data collection system and method to collect, record and report on a plurality of well know merchandising/marketing information wherein the system utilizes a plurality merchandisers who each visit a plurality of stores (retail outlets, distributors, etc.) in order to conduct merchandising surveys via handheld/portable devices having code readers, transmission means and touch-screen displays. The article further teaches Anheuser-Busch's deployment of a similar system in 1997 as well as the availability of such systems from Thinque Systems.

- CASIO Soft Ltd. Launches MobileLink in the UK (Jun. 2000) teaches the public use and commercial availability of a merchandiser tracking and marketing data collection system and method (MobileLink 2.4) wherein the system/method "is designed to give companies control over call schedules, surveys and on-the-job performance through an easy-to-use Web interface that delivers detailed management reports in real-time..." The article further teaches that the MobileLink system/method enables electronic signature capture, automatic tracking of call duration, bar code readers, multiple quantity scan incrementing and digital imaging.

- CASIO: mobidata named as CASIO Soft's German distributor (Sep. 2000) teaches a merchandiser tracking and marketing data collection system that was released in 1998 and is utilized by a plurality of businesses including but not limited to marketing service firms such as MarketStar and Field Marketing, Inc. who leverage the system/method to "perform data collection and merchandising services."

- Thinque.com Web Pages (Feb. 2000) teaches a system and method for collecting and analyzing a plurality of marketing/merchandise information wherein mobile field representatives collect and transmit a plurality of store and/or product level data via handheld devices (call reports) for the purposes of responding to out-of-stock conditions, pricing compliance, promotion management, competitive/market analysis, managing the field force and the like.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott L. Jarrett whose telephone number is (571) 272-7033. The examiner can normally be reached on Monday-Friday, 8:00AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hafiz Tariq can be reached on (571) 272-6729. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SJ
12/5/2005

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